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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/455,576	12/06/1999	KIYOTAKA NAKABAYASHI	450100-02236	5333

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745 FIFTH AVENUE- 10TH FL.  
NEW YORK, NY 10151

EXAMINER
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WU, JINGGE

ART UNIT	PAPER NUMBER
2623	

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/455,576	<b>Applicant(s)</b> NAKABAYASHI ET AL.
	<b>Examiner</b> Jingge Wu	<b>Art Unit</b> 2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on \_\_\_\_.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1 and 2 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_ is/are allowed.

6) Claim(s) 1 and 2 is/are rejected.

7) Claim(s) \_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 14 January 2003 is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All   b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ .	6) <input type="checkbox"/> Other: _____

***Response to Amendment***

1. Applicants' response to the last Office Action, filed January 14, 2003 has been entered and made of record.
2. The drawing changes filed on January 14, 2003 have been approved and made of record. The objection to the drawing is expressly withdrawn.

***Remarks***

3. Applicant's arguments with respect to claims 1-2 regarding to Katoch have been fully considered, but they are not persuasive.
  - a. Applicant argues that Katoch does not relate to conversion to device optimal color space that the invention has. Thus, the section 102 rejection must fail as matter of law.

Examiner strongly disagrees. However, in response to applicant's argument, Examiner would like to point out that claim language is given its broadest reasonable interpretation. The specification is not measure of invention. Therefore, limitations contained therein can not be read into the claims for the purpose of avoiding the prior art. *Ir re Sporck*, 55CCPA 743, 386 F. 2d 924, 155 USPQ 687 (1968). In the instant case, first, the claim language does not have the words "device optimal color space", nor has anything related to "relate conversion to device optimal color space". Thus, the limitations "can not be read into the claims for the purpose of avoiding the prior art." Second, even considering the limitation of device optimal color space, the claim language is still anticipated by Katoch because the meaning of "device optimal color space" is nothing but converting the colors based on a chromatic adaptation model

according to the specification (page 7), which is exactly Katoh disclosed (see paper #8). 35 USC 102 does not require a word by word matching as applicant argues, rather requires to read the claim language in light of the specification.

Finally, Katoh clearly teaches all limitations as broadly claimed in the claims. The 102 rejection should be sustained.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5754682 to Katoh.

As to claim 1, Katoh discloses an image processing apparatus for processing the image data input from an image handling device and then output the image data to another image handling device (Fig. 5), comprising:

Black-adaptation correction means (Fig. 6 and 13, elements 12-14) for correcting the image data in consideration of the fact the adaptation to black varies from person to person, if the darkest point of the image handling devices differ from each other, so that the colors of the images produced by the image handling devices look almost the same (col. 9 line 1-col. 10 line 37, col. 18 line 43-col. 19 line 55, col. 20 lines 4-62).

As to claim 2, the claim is a corresponding method claim to claim 1. the discussions are addressed with regard to claim 1.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

7. Any inquiry concerning this communication or earlier communications should be directed to Jingge Wu whose telephone number is (703) 308-9588. He can normally be reached Monday through Thursday from 8:00 am to 5:30 pm. The examiner can be also reached on second alternate Fridays.

Any inquiry of a general nature or relating to the status of this application should be directed to TC customer service whose telephone number is (703) 306-0377.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Amelia Au, can be reached at (703) 308-6604.

The Working Group Fax number is (703) 872-9314.

Jingge Wu

Primary Patent Examiner

***DETAILED ACTION***

***Drawings***

1. Figures 1-2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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the colors of the images produced by the image handling devices look almost the same (col. 9 line 1-col. 10 line 37, col. 18 line 43-col. 19 line 55, col. 20 lines 4-62).

As to claim 2, the claim is a corresponding method claim to claim 1. the discussions are addressed with regard to claim 1.

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 6229916 to Ohkubo, US 6124944 to Ohta, US 6101272 to Noguchi, and US 6105246 to Usami disclose methods for chromatic adaptation.

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Jingge Wu  
Patent Examiner  
Art Unit 2623  
2/21/03